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#5
PATENT

IN THE UNITED STATES

PATENT AND TRADEMARK OFFICE

APPLICANTS: Jeffrey S. Hastings *et al.*

APPLICATION NO.: 09/976,686

FILING DATE: October 11, 2001

TITLE: FAIL SAFE RECOVERY

EXAMINER: UNASSIGNED

GROUP ART UNIT: 2184

ATTY. DKT. NO.: 22407-05490

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OFFICE OF PETITIONS

**DECLARATION OF BRIAN M. HOFFMAN OF FACTS
IN SUPPORT OF PETITION UNDER 37 C.F.R. § 1.47(a)**

I, Brian M. Hoffman, hereby declare and state as follows:

1. This statement is made as to the exact facts that are relied upon to establish the diligent effort made to secure the execution of the Declaration by the nonsigning inventor for the above-identified patent application.

2. This statement is being made by an available person having first-hand knowledge of the facts recited herein.

3. I am a patent attorney employed by Fenwick & West LLP, Suite 1500, 275 Battery Street, San Francisco, California, 94111.

4. On October 11, 2001, I filed a utility patent application entitled "Fail Safe Recovery," now Application No. 09/976,686 at the request of my client, Sonicblue, Inc. ("Sonicblue").

5. Application No. 09/976,686 names two inventors: Jeffrey S. Hastings and Ruxiang Wang.

6. I filed the patent application without Declarations by the inventors. On November 19, 2001, I received a Notice to File Missing Parts of Nonprovisional Application

from the U.S. Patent & Trademark Office requesting that I provide executed Declarations from the inventors.

7. Upon information and belief, Mr. Wang was at one point, but is not currently, employed by Sonicblue.

8. Upon information and belief formed through my conversations with various employees of Sonicblue, I learned that Mr. Wang's last known address is: 41415 Timber Creek Terrace, Fremont, CA 94539. I also learned that Mr. Wang's last known work telephone number is (510) 771-3938.

9. Upon information and belief formed through my conversations with various employees of Sonicblue, I also learned that Mr. Wang uses the anglicized first name of "Roger." Thus, "Ruxiang Wang" and "Roger Wang" are the same person.

10. On December 21, 2001, I sent a package via Federal Express to Roger Wang, 41415 Timber Creek Terrace, Fremont, CA 94539. The package contained a pre-paid and pre-addressed return Federal Express envelope, a copy of the specification, claims, and drawings for the instant application, a Declaration, Power of Attorney, and Assignment, and a letter asking Mr. Wang to sign these documents and return them to me using the enclosed envelope. Copies of the letter, Declaration, Power of Attorney, Assignment, and Federal Express documentation evidencing delivery of the package are attached as Exhibit A. As of March 13, 2002, I have not received a response to this package from Mr. Wang.

11. During the week of February 4-8 2002, I telephoned Mr. Wang at 510-771-3938. A voicemail system answered my call with a message recorded by a man who did not identify himself. I left a message asking for the man to return my call or sign and return the documents I previously sent to Mr. Wang. As of March 13, 2002, I have not received a response to the message I left on the voicemail system.

12. On February 27, 2002, I sent a second package containing a pre-paid and pre-addressed return Federal Express envelope, the specification, claims, and drawings for the instant application, and a Declaration, Power of Attorney, and Assignment to Mr. Wang at 41415 Timber Creek Terrace. I sent this package via U.S. Certified Mail, with return receipt

requested and delivery restricted to only Mr. Wang. On approximately March 4, 2002, I received the return receipt indicating that the second package was delivered and signed for on February 28, 2002. Documentation evidencing delivery and receipt of this second package is attached hereto as Exhibit B. As of March 13, 2002, I have not received any response to this package from Mr. Wang.

I declare further that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true and further declare that these statements are made with knowledge that willful false statements are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing therein. I also declare that all Exhibits attached to this Declaration are true and correct copies of the documents described therein.



Respectfully submitted,

Dated: March 13, 2002

By: 
Brian M. Hoffman, Reg. No. 39,713

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